



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Astronautics Corporation of America

**File:** B-229812; B-229853; B-229854; B-229855;  
B-229856; B-229857; B-229858; B-230241

**Date:** March 25, 1988

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### **DIGEST**

1. Protests that solicitations issued by contracting agency conflict with protester's mandatory requirements contract are untimely when filed after closing dates and months after publication of requirements in the Commerce Business Daily.
2. Protests that solicitations should be canceled are rendered academic by contracting agency's cancellation of these solicitations.

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### **DECISION**

Astronautics Corporation of America (ACA) protests the issuance of eight solicitations for spare parts for Standard Remote Terminals (SRTs) by the U.S. Army Communications-Electronics Command (CECOM). The protester argues that the agency should instead have placed an order against its requirements contract No. DAEA18-85-D-0056, and requests that the solicitations be canceled.

We dismiss the protests.

On December 12, 1984, the U.S. Army Information Systems Management Activity awarded the protester a requirements contract for regular maintenance services, for continuation of existing leases and for special maintenance services for SRTs for fiscal year (FY) 1985 with three 1-year options, which have been exercised. Under the contract, the protester's geographical area of responsibility for maintenance services for SRTs includes all SRT sites worldwide. The contract contains a version of Federal Acquisition Regulation § 52.216-21 making the contract mandatory for activities specified in the schedule. Modification No. 3, dated February 18, 1985, formally added a list of spare parts that could be special ordered by Department of Defense (DOD) activities from the protester under the contract.

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On August 28 and 31, 1987, CECOM published notices in the Commerce Business Daily (CBD) of four solicitations for spare parts identical to those under the protester's requirements contract, as added by Modification No. 3. All four solicitations have since closed, the latest on November 25, 1987.1/

On December 1, 1987, ACA by telephone requested copies of these and other solicitations from the agency; the agency forwarded copies on December 7. On December 21, the protester filed protests against these four solicitations, asking that we direct the agency to cancel the solicitations, which the protester views as a breach of its requirements contract.2/

We find that the four protests of December 21, 1987 were untimely filed and are dismissed. These protests filed on December 21 concerned solicitations synopsisized in the CBD 4 months previously and whose closing date had passed. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date be filed by that date and that other protests be filed with our Office within 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(1) and (a)(2) (1987). Further, protesters generally are charged with constructive notice of a synopsis published in the CBD. Julie Research Laboratories, Inc., B-219363, Aug. 27, 1985, 85-2 CPD ¶ 232. The protester argues that the CBD notice did not disclose that the spares to be procured were identical with the spares listed in its contract, and that it was not until December when it received copies of the solicitations did it become aware of its basis for protest. The synopses appeared, however, in August and specifically identified the parts by National Stock Number, by part number and by actual manufacturer. Further, the protester offers no explanation as to why it failed to request copies of the solicitations prior to December. In this regard, a protester's failure to pursue the matter diligently by

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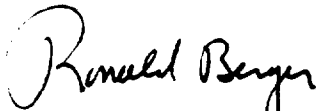
1/ RFP No. DAAB07-88-R-Q622, synopsis published August 31, closing November 25; No. DAAB07-88-R-Q623, synopsis August 28, closing date November 12; No. DAAB07-87-R-Q885, synopsis August 31, closing October 19; No. DAAB07-87-R-Q886, synopsis August 31, closing October 23.

2/ The protester has filed protests against four other solicitations. Since we need not determine the timeliness of these protests, we discuss them separately below.

seeking necessary information within a reasonable time will also result in dismissal of the protest as untimely. See generally Douglass Industries, Inc.--Reconsideration, B-218365.2, May 9, 1985, 85-1 CPD ¶ 517. Under the circumstances, the four protests in question are clearly untimely and will not be considered on the merits.

ACA also protests solicitation Nos. DAAB07-88-R-Q612, DAAB07-87-R-Q861, DAAB07-88-R-Q633, and DAAB07-88-R-Q673. The Army has advised our Office that the first three of these solicitations have been or will be canceled. Further, solicitation No. Q673 was synopsisized but was never issued, and the requirement will be resynopsisized with closing and delivery terms that will not conflict with ACA's requirements contract, which expires in September 1988. Accordingly, since ACA requested cancellation of these solicitations and they have been or will be either canceled or revised to avoid conflict with the protester's requirements contract, the protests are academic. See generally James M. Carroll--Reconsideration, B-221502.3, Mar. 24, 1986, 86-1 CPD ¶ 290.

The protests are dismissed.



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